

**JAN 03 2006***Uribe v. Autozone, Inc.*, No. 04-55323SILVERMAN, Circuit Judge, concurring in part and dissenting in part: **CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

The majority is correct that the district court erred in granting judgment on the pleadings on Uribe's invasion of privacy claim. That error, however, turned out to be harmless. Discovery undertaken in aid of Autozone's motion for summary judgment revealed that an Autozone employee reported that he had seen Uribe and Ms. Ornelas kissing in the store parking lot *before* Ms. Ornelas' transfer and that Uribe may have authorized her transfer without proper approval. Under those circumstances, and upon discovering that Uribe and Ms. Ornelas were openly dating *after* her transfer, Autozone had a right to question Uribe to determine when their relationship actually began, as the district court correctly ruled in connection with the summary judgment motion. Although judgment on the pleadings was not the appropriate vehicle, the subsequent summary judgment motion flushed out the issues correctly. There is nothing left to decide. For that reason, I would affirm the district court.